



Senate Fiscal Agency  
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## BILL ANALYSIS



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House Bill 4003 (Substitute S-8 as passed by the Senate) *(enacted version)*  
Sponsor: Representative Paul Opsommer  
House Committee: Families, Children, and Seniors  
Senate Committee: Reforms, Restructuring and Reinventing

Date Completed: 12-10-12

**CONTENT**

**The bill would amend the public employment relations Act (PERA) to do the following:**

- **Permit public employees to engage in, or refrain from, collective bargaining activities.**
- **Prohibit an individual from being required to engage in or refrain from certain activities (such as joining or paying dues to a labor organization) as a condition of public employment, except as provided for police and fire department employees and State Police troopers and sergeants.**
- **Prescribe a \$500 maximum civil fine for a violation of that prohibition, and allow a person injured by a violation to bring a civil action for damages, injunctive relief, or both.**
- **Give the Court of Appeals exclusive jurisdiction over an action challenging the validity of this prohibition and the exceptions to it.**
- **Prohibit a person from forcing or attempting to force a public employee to engage in or refrain from certain activities (such as joining or supporting a labor organization); and prescribe a \$500 maximum civil fine for a violation.**
- **Delete provisions under which all public employees in a bargaining unit may be required to pay the bargaining representative a service fee equivalent to dues.**
- **Appropriate \$1.0 million to the Department of Licensing and Regulatory Affairs in fiscal year 2012-13 for implementation of the amendments.**

(The Act governs collective bargaining between public employers and representatives of their employees. The definition of "public employee" includes a person holding a position by appointment or employment in State or local government, in the public school service, and in any other branch of the public service, subject to exceptions.)

**Organizing & Collective Bargaining**

The Act states that it is lawful for public employees to organize together or form, join, or assist in labor organizations, engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or negotiate or bargain collectively with their public employers through representatives of their choice.

The bill, instead, would permit public employees to engage in those activities or to refrain from any or all of them.

**Condition-of-Employment Prohibition**

Except as provided below (for police and fire department employees and State Police troopers and sergeants), the bill would prohibit any individual from being required as a condition of obtaining or continuing public employment to do any of the following:

- Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization or bargaining representative.
- Become or remain a member of a labor organization or bargaining representative.
- Pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value to a labor organization or bargaining representative.

Also, as a condition of obtaining or continuing public employment, an individual could not be required to pay to any charitable organization or third party any amount that was in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or public employees represented by a labor organization or bargaining representative.

An agreement, contract, understanding, or practice between or involving a public employer, labor organization, or bargaining representative that violated this prohibition would be unlawful and unenforceable. This would apply only to an agreement, contract, understanding, or practice that would take effect or be extended or renewed after the bill's effective date.

A person, public employer, or labor organization that violated the prohibition would be liable for a civil fine of up to \$500. The fine would have to be submitted to the State Treasurer for deposit in the State's General Fund.

Except for actions required to be brought in the Court of Appeals, a person who suffered an injury as a result of a violation or threatened violation of the prohibition could bring a civil action for damages, injunctive relief, or both. A court also could award court costs and reasonable attorney fees to a prevailing plaintiff. These remedies would be independent of and in addition to other penalties and remedies prescribed by PERA.

#### Exception for Police & Fire Employees

The condition-of-employment prohibition would not apply to either of the following:

- A public police or fire department employee or any person seeking to become employed as a public police or fire department employee, as that term is defined in Public Act 312 of 1969.
- A State Police trooper or sergeant granted rights under Article XI, Section 5 of the State Constitution or any individual seeking to become employed as a State Police trooper or sergeant.

The bill would permit any of these individuals, or a labor organization or bargaining representative representing them, and a public employer or this State, to agree that all employees in the bargaining unit would have to share fairly in the financial support of the labor organization or the exclusive bargaining representative by paying a fee to the labor organization or bargaining representative that could be equivalent to the amount of dues uniformly required of members of the labor organization or exclusive bargaining representative.

Provisions of the bill that would prohibit someone from being compelled to join or refrain from joining a labor organization (as described below) could not be construed to interfere with the right of a public employer or the State and a labor organization or bargaining representative to enter into or lawfully administer such an agreement as it related to the individuals listed above.

If a court found that any of the proposed exceptions for police and fire department employees and State Police troopers and sergeants were invalid, those individuals would no longer be exempted from the condition-of-employment prohibition, and the bill's provision allowing a fair-share agreement would not apply to them.

(Public Act 312 of 1969 provides for compulsory arbitration of labor disputes in police and fire departments. The Act defines "public police or fire department employee" as any employee of a city, county, village, or township, or of any authority, district, board, or any other entity created by the authorization of one or more cities, counties, villages, or townships, who is engaged as a police officer, or in fire-fighting or subject to the hazards of fire-fighting, or an emergency telephone operator if directly employed by a public police or fire department.

Article XI, Section 5 of the State Constitution provides that State Police troopers and sergeants, through their elected representative, have the right to bargain collectively with their employer concerning conditions of their employment, compensation, hours, retirement, pensions, and other aspects of employment.)

#### Court of Appeals Jurisdiction

The Court of Appeals would have exclusive original jurisdiction over any action challenging the validity of the condition-of-employment prohibition, and the exceptions for police and fire department employees and State Police troopers and sergeants. The Court would have to hear the action in an expedited manner.

#### Unlawful Force, Intimidation, or Compulsion

The bill would prohibit a person by force, intimidation, or unlawful threats, from compelling or attempting to compel any public employee to do any of the following:

- Become or remain a member of a labor organization or bargaining representative, or otherwise affiliate with or financially support a labor organization or bargaining representative.
- Refrain from engaging in employment or from joining a labor organization or bargaining representative or otherwise affiliating with or financially supporting a labor organization or bargaining representative.
- Pay to any charitable organization or third party an amount that would be in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or public employees represented by a labor organization or bargaining representative.

A person who violated this prohibition would be liable for a civil fine of up to \$500. The fine would have to be submitted to the State Treasurer for deposit in the State's General Fund.

#### Service Fee Requirement

The Act prohibits a public employer from discriminating in regard to hiring, terms, or other conditions of employment to encourage or discourage membership in a labor organization.

Neither the Act nor any other law, however, precludes a public employer from making an agreement with an exclusive bargaining representative to require as a condition of employment that all employees in the bargaining unit pay to the bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative. The bill would delete this provision.

Public Act 25 of 1973 amended several sections of PERA, and the Act states that it is the purpose of Public Act 25 to reaffirm the continuing public policy of the State that the stability and effectiveness of labor relations in the public sector require, if negotiated with the public employer, that all employees in the bargaining unit share fairly in the financial support of their exclusive bargaining representative by paying to the representative a service fee that may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

The bill would delete this language.

### School Employee Bargaining

The public employment relations Act lists various subjects that may not be included in collective bargaining between a public school employer and a bargaining representative of its employees. The bill would add to the list any requirement that would violate Section 10(3) (which contains the proposed condition-of-employment prohibition).

### Appropriation

For fiscal year 2012-13, the bill would appropriate \$1.0 million to the Department of Licensing and Regulatory Affairs to be spent to do all of the following:

- Respond to public inquiries regarding the bill.
- Provide the Michigan Employment Relations Commission with sufficient staff and other resources to implement the bill.
- Inform public employers, public employees, and labor organizations about their rights and responsibilities under the bill.

The appropriation also could be spent for any other purposes that the Department Director determined necessary to implement the bill.

MCL 423.201 et al.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government.

The bill would delete provisions that allow a public employer to collect a fee equal to the membership dues collected from members if an individual declines to join a labor organization, except the bill would allow the collection of these fees for police and fire department employees. The fees are credited to the labor organization. At this time, it is impossible to quantify what, if any, impact this change could have on the finances of State and local government. Since the bill would exclude firefighters and police officers from proposed the condition-of-employment prohibition, any changes to collective bargaining agreements that could be attributed to the bill would likely have less of an impact on local governments than on State government.

Also, the bill would establish a \$500 maximum civil fine for a person, public employer, or labor organization that violated a prohibition under the bill. It is unknown how many parties would commit a violation, but revenue from the fines would be credited to the General Fund.

In addition, the bill includes a \$1.0 million fiscal year 2012-13 appropriation to the Department of Licensing and Regulatory Affairs for public inquiries, staffing, provision of information, and other activities related to the bill. It is not clear what the actual amount of these costs would be, or how much, if any, of this appropriation would be spent.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.